



PREPROPOSAL STATEMENT OF INQUIRY

(RCW 34.05.310)

CR-101 (7/22/01)

Do **NOT** use for expedited rule making

Agency: Department of Ecology A.O. 03-10

Subject of possible rule making: Dangerous Waste Regulations, chapter 173-303 WAC will be amended to incorporate several federal hazardous waste regulations, including adding mercury-containing devices to the universal waste rule, updating export requirements, adopting air emission permit rules, and amendments to corrective action rules. Changes to state-only requirements are primarily technical in nature; however, changes are being considered to implement the Hazardous Waste Facilities Initiative to extend financial requirements to recyclers and used oil processors and re-refiners.

(a) Statutes authorizing the agency to adopt rules on this subject: Chapters 70.105 and 70.105D RCW, the Hazardous Waste Management Act and Hazardous Waste Cleanup-Model Toxics Control Act.

(b) Reasons why rules on this subject may be needed and what they might accomplish: One key purpose of this rulemaking is to update the Dangerous Waste Regulations by incorporating recent federal hazardous waste requirements into the state's regulations. By staying current with the federal program, the regulated community has primarily one environmental agency to work with. The second purpose is to update state requirements, including implementing recommendations of the Hazardous Waste Facilities Initiative.

(c) Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: The federal Environmental Protection Agency (EPA) implements hazardous waste regulations in Washington until Ecology adopts those regulations and begins implementing them. A formal EPA authorization process follows Ecology's adoption. EPA is aware of which federal regulations Ecology intends to adopt during this rulemaking. Ecology will provide drafts to EPA for their review and will communicate with EPA throughout the rulemaking process.

(d) Process for developing new rule (check all that apply):

☐ Negotiated rule making

☐ Pilot rule making

☐ Agency study

☒ Other (describe) One of the main purposes of this rulemaking is to update existing hazardous waste requirements with newer federal rules. Since many of these are already in effect (and were developed as part of federal rulemaking), the process will consist primarily of making draft and proposed rule language available for review and comment. Input will be sought where Ecology may differ from the federal program. [See attached.](#)

(e) How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

(List names, addresses, telephone, fax numbers of persons to contact; describe meetings, other exchanges of information, etc.)

To receive information on the rulemaking (availability of draft and proposed rules, hearing announcements, and opportunities for public involvement), or for more detailed information about the rulemaking content and process, contact: Patricia Hervieux at pher461@ecy.wa.gov or, you may call (360) 407-6756, write Attn: HWTR PO Box 47600 Olympia, WA 98504-7600, or FAX (360) 407-6715. Please submit comments on the options for recyclers and used oil processor to Jim Sachet at the same address or to jsac461@ecy.wa.gov For announcements throughout the rulemaking you may sign up for the DW Regulations list serve at <http://listserv.wa.gov/archives/dw-rules.html>

Visit Ecology's Rules Website at:

<http://www.ecy.wa.gov/laws-rules/currentactivity.htm>

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2/2/04

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FEB 4 2004

TIME 8:20 AM
WSR 04-04-101

Attachment

(d) Process for developing new rule continued

Ecology is also asking for comment at this time on options to implement the Hazardous Waste Facilities Initiative. Ecology is considering making amendments to the Dangerous Waste Regulations that affect hazardous waste treatment, storage, disposal and recycling facilities, and used oil processors that accept wastes from off-site. These amendments will not change the way in which on-site recycling and treatment are done by hazardous waste generators, or waste collection and handling facilities operated by local governments (e.g., household hazardous waste collection, used oil collection).

We are asking the public and potentially affected parties to provide Ecology with information and comment at this time on two options for rulemaking regarding these hazardous waste facilities. The options under consideration are:

Option 1: Applying traditional site specific requirements to hazardous waste recycling facilities and used oil processors. Currently, hazardous waste treatment, storage and disposal facilities must, among other things, provide the following:

- A closure plan that describes how buildings, structures and equipment that manage hazardous wastes will be closed in a safe and timely manner;
- Pollution legal liability (PLL) coverage to pay for claims by third parties that are damaged from a release of hazardous wastes; and,
- A cost estimate for closure and financial assurance to pay for waste removal, decontamination and clean up (financial assurance).

Recyclers and used oil processors have been exempted from these requirements. Option 1 would extend the requirements listed above to recycling facilities and used oil processors. This approach results in specific cost estimates for closure based on a full inventory of wastes, third party costs, and no resale value of wastes in process.

Option 2: Developing a more streamlined approach for off-site recycling facilities and used oil processors. Under this option, recyclers and used oil processors would be required to address the eventual closure of their operations by:

- Preparing a closure plan; and
- Providing a maximum of \$50,000 in financial assurance. This amount could be lower if the facility owner or operator prepares a detailed closure cost estimate and justification for review and approval by Ecology.

This option would also consider deleting the requirement for pollution liability coverage for third party damages.

Ecology requests comments and input on the above options. Commenters are requested to respond to the following questions:

Q1. Do you have a preference for an option listed above? If so, which option and why?

Q2. Are there other options that Ecology should consider that will help assure safe and orderly closure of hazardous waste management facilities and that owners/operators pay for a significant portion of the cost of closure?

Q3. Are there factors other than closure plans, closure cost estimates, liability coverage, and financial mechanisms for assuring closure funding (e.g., bond, letter of credit, insurance) that Ecology should consider?

Q4. Would you be willing to pay slightly more (e.g., 5%) for waste treatment, disposal or recycling for greater assurance that the facility managing the waste would pay for waste removal and decontamination of its facility in the event of bankruptcy, sale, or closure?

Ecology is also requesting any information that generators or facilities have available on closure cost estimates for hazardous waste recycling or used oil processing operations.